

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TODD B. GIBBS,

Plaintiff(s)

vs.

PATRICK HURLEY, Warden

Defendant(s)

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Case Number: 1:01cv838-SJD-TSH

District Judge Susan J. Dlott

ORDER

The Court has reviewed the Report and Recommendations of United States Magistrate Judge Timothy S. Hogan filed on February 9, 2004(Doc. 15), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired February 27, 2004, hereby ADOPTS said Report and Recommendations.

IT IS ORDERED that petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is hereby DENIED with prejudice.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this order would not be taken in "good faith" and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

A certificate of appealability shall not issue because, for the reasons stated in the Report and Recommendations, petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this federal habeas corpus proceeding. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Petitioner has not shown that reasonable jurists could debate

whether his claims should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.” *Miller-El v Cockrell*, 537 U.S. 322, 323-24 (2003) (quoting *Slack v McDaniel*, 529 U.S. 473, 483-484 (2000))(in turn quoting *Barefoot v Estelle*, 463 U.S. 880, 893 n.4 (1983)).

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge